

**COURT OF COMMON PLEAS
HAMILTON COUNTY, OHIO**

K AND H INDUSTRIES, LLC	:	CASE NO.
1041 Evans Street	:	
Cincinnati, Ohio 45204	:	JUDGE
Plaintiff		:
-vs-		COMPLAINT
YRC, INC.	:	
3570 South River Road	:	
Zanesville, Ohio 43702-1585	:	
Please also serve statutory agent:		:
Clay P. Graham, Statutory Agent	:	
3570 South River Road	:	
P.O. Box 1585	:	
Zanesville, Ohio 43702-1585	:	

* * * * *

Now comes Plaintiff, K and H Industries, Inc. ("K and H"), by counsel, and for its Complaint against Defendant, YRC, Inc. ("YRC"), states as follows:

JURISDICTION AND VENUE

1. Plaintiff is a limited liability company organized in the State of Ohio and has a principal place of business in Cincinnati, Hamilton County, Ohio.
2. Defendant is an Ohio corporation with a principal place of business located in Zanesville, Muskingham County, Ohio and does business in Hamilton County, Ohio.

FACTS

3. On or about October 26, 2009, K and H entered into a contract with YRC to ship a Numerex Coordinate Measuring System from Houston, Texas to K and H's place of business in Cincinnati, Ohio. (See Exhibit A, attached hereto.)

FAULKNER & TEPE LLP Attorneys at Law

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3. The Numerex Coordinate Measuring System ("System") is a high precision machine used in tool and die manufacturing.

4. K and H requested YRC's Sealed Divider Service which Defendant claims is a "patented solution for shipment protection and verifiable security." YRC claims the Sealed Divider Service "reduces possibility of damage by minimizing handling..." (See Exhibit B, attached hereto.)

5. Upon delivery of the System to K and H's facility, it was found to have been damaged and not shipped according to YRC's Sealed Divider Service standards requested by Plaintiff.

6. K and H had purchased the System from Constantin Precision Instrumentation for the price of \$51,976.00. The damage to the System was so extensive as to make the repair costs prohibitive thereby resulting in a total loss of the system.

COUNT I: VIOLATION OF 49 USC §14706

7. Plaintiff hereby incorporates paragraphs one through six of the Complaint as if fully rewritten herein.

8. Defendant was contracted and hired by Plaintiff to serve as carriers of the System from Houston, Texas to Plaintiff's place of business in Cincinnati, Ohio. The System was delivered to Defendant in good condition and the System arrived in damaged condition.

9. The damage to the System has resulted in a total loss to Plaintiff in the amount of \$51,976.00.

COUNT II - NEGLIGENCE

10. Plaintiff hereby incorporates paragraphs one through nine of the Complaint as if fully rewritten herein.

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11. Defendant is under a duty of care to conduct professional operations, including but not limited to loading and transport operations, with reasonable care. In offering Plaintiff the Sealed Container Service, Defendant owed to Plaintiff the highest degree of care.

12. Defendant breached its duty to Plaintiff to use reasonable care and/or the highest degree of care.

13. Defendant's negligence directly and proximately caused harm to the System for which Plaintiff has been damaged in the amount of \$51,796.00.

COUNT III - BREACH OF CONTRACT

14. Plaintiff incorporates by reference, as if fully rewritten herein, the allegations contained in paragraphs 1 and 13, inclusive.

15. Despite its obligation to Plaintiff and in contravention to Plaintiff's request for use of the Sealed Divider Service, Defendant failed to utilize the Sealed Divider Service during the shipment of Plaintiff's System.

16. By failing to utilize the requested Sealed Divider Service, Defendant has breached its contractual obligations to Plaintiff. As a direct and proximate cause of the breach(es), Plaintiff has suffered damages and will continue to suffer damages in an amount to be proven at trial in the sum of \$51,796.00.

WHEREFORE, Plaintiff, K and H Industries, LLC, respectfully requests judgment against Defendant, YRC, Inc., in the amount of \$51,796.00, plus interest, including prejudgment interest, attorney's fees any such other relief as this Court deems appropriate.

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Respectfully submitted,

/s/ John C. Scott

JOHN C. SCOTT, #0029518
CHARLES E. BAVERMAN, #0083796
Attorney for Plaintiff
FAULKNER & TEPE, LLP
1 West Fourth Street, Suite 2050
Cincinnati, Ohio 45202
(513) 421-7500

INSTRUCTIONS TO THE CLERK

Please serve the within named Defendant at the address indicated herein by Certified
Mail, Return Receipt Requested, Ordinary Mail Waiver.

/s/ John C. Scott

JOHN C. SCOTT

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YRC AIR AIR OVERNIGHT AIR FED EXCL

SHIP DATE	DESTINATION	RATE CODE	ITEM/PIECE KG	ITEMS
10-26-09	215-1	142	431..14G	01 OF 01

ACCT/DEPT. NO.

NR

CONCENTRIN PRECISION INC
1600 SHERWOOD FOREST A-1
HOUSTON TX 77043K AND H INDUSTRIES
1041 EVANS ST
CINCINNATI OH 45204

SHIP TO CODE

FOLIO NUMBER

SERVICE

EXTRA

CUST. CODE

6868

530-769659-0

THE TARIFFS OF YRC LIMIT OUR LIABILITY.
ALL FREIGHT RECEIVED IN GOOD ORS AND
SHRINKWRAP/BANDING INTACT UNLESS NOTED
BELLOW. THANK YOU! YRC.

PLEASE SIGN HERE DATE TIME

RONDA WALTERS 583 884 5712

SIGNATURE

SHARKEY

MIKE ROZ CHECK

NS

PRO 530-769659-0

DEL BY NOON

Should Have Been
A Gen Divice!!!

NO. /NU	PLT	DESCRIPTION OF ARTICLES	CODE	WEIGHT (KG)	DATE	CHARGE
1	PLT	COMM MACHINE NMFC=999999806 CLC100	0100	3000		Scratches & Dents on Bottom -
2	PLT	ACMGS & AL PLATES NMFC=999999804 CLC100	0100	C		High porision must been bumped!
		PERCENT EXCISEMENT		20		
		GENERAL SURCHARGE FUEL ADJUST	TTL	3001		
2	TL	713-461-9090 / 713-531-6770	Precision	multiple PLATE DAMAGED		DEL.

CONSIGNEE'S COPY

ADV ON

CR. IN DATE

ADV C/L/PAYBILL NO.

ADV CR. AMT

DUE FM ADV CO.

EXHIBIT A



Need Help? Call us 800-920-1000

Shipment Protection

Sealed Divider™

Our patented solution for shipment protection and verifiable security. Sealed Divider™ Service is ideal for products that are difficult or expensive to package for shipping, are of high value, or need verifiable security throughout transit.

Find out more about our Sealed Divider service by watching a short video. [Click here.](#)

Features

- Pay only for the space you use - Like our normal transportation service, you pay only for the space your shipment takes up. Pricing is based on linear feet
- Minimum handling - Once your shipment is sealed behind the divider, it will not be handled again until it reaches its final destination
- Tamper resistant - Your shipment is stored, at pickup, behind a divider which is secured with a deck bar and two numbered rod lock seals
- Tamper evident - Should the rod lock seals be removed, it will be immediately realized. In the event the rod lock seals are removed and replaced, the different seal numbers will be a flag for the consignee

[Click here to see how Sealed Divider™ Service protects your shipment.](#)

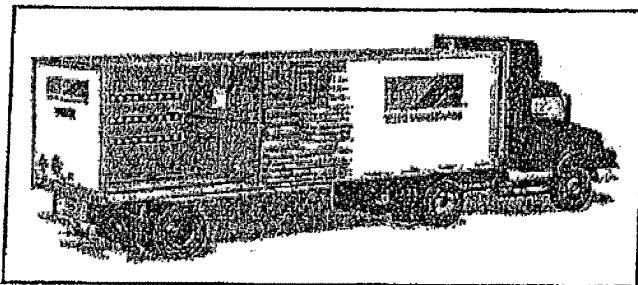
Benefits

- Cost effective - If you don't need an entire trailer for your shipment, you don't pay for an entire trailer
- Protection - Reduces possibility of damage by minimizing handling and eliminating co-mingling of shipments
- Security - Protects your shipment from theft and burglary
- Documentation - In the event government or industry regulations require it, provides clear documentation as to the movement, handling and security of your shipment
- Traceable - Provides the entire shipping network a method of determining where a potential security breach may be for further investigation
- Convenience - Trailers can be spotted at shipper or consignee's location for loading and unloading to fit your schedule

Advantages

- Real-Time Tracking - Can track status of shipment on the Web with the [Tracking tool](#), or call toll-free 1-800-762-3929
- Published Pricing - For our competitive pricing, go to the YRC [Tariff T-100](#) and select item "554 Sealed Divider Services"
- U.S. and Canada - Available in the 48 contiguous U.S. states and Canada
- ISO certification - Your assurance of consistent quality

For a closer look at how Sealed Divider Service protects your shipment, click the image below.



To arrange your Sealed Divider™ shipment today, [contact your service center](#).

EXHIBIT B